

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-10680-GAO

DEBRA LaFLAMME,
Plaintiff,

v.

HSBC MORTGAGE SERVICES, INC.,
Defendant.

OPINION AND ORDER
June 24, 2010

O'TOOLE, D.J.

Debra LaFlamme has been embroiled in an eviction proceeding with HSBC Mortgage Services, Inc. ("HSBC") in the Massachusetts Housing Court Department, Northeast Division ("Housing Court") since June 2009. The Housing Court has entered two orders staying a writ of execution entered in that case. On April 15, 2010, LaFlamme filed a civil contempt complaint with the Housing Court alleging that HSBC had twice violated the court's orders by entering her home despite the stay of execution. On the basis of the contempt complaint, HSBC purported to remove the action to this Court relying on diversity jurisdiction. LaFlamme now moves to remand this action to the Housing Court.

Only "civil action[s] brought in a State court" are removable to federal district courts. 28 U.S.C. § 1441(a). The term "civil action" has been interpreted to require a separate suit that is not supplementary, ancillary, or incidental to a state court action. See Armistead v. C & M Transp., Inc., 49 F.3d 43, 46 (1st Cir. 1995); 14B Charles Alan Wright et al., Federal Practice and Procedure § 3721 (4th ed. 2009). Even if a civil contempt proceeding is considered a

separate action under Massachusetts law, Jones v. Manns, 602 N.E.2d 217, 220 (Mass. App. Ct. 1992), this civil contempt proceeding is so intertwined with the eviction proceeding that it is ancillary to that proceeding and should be remanded to the Housing Court.

For the foregoing reasons, the plaintiff's Motion to Remand (dkt. no. 3) is GRANTED. The Clerk is directed forthwith to transmit the case to the Massachusetts Housing Court Department, Northeast Division. The plaintiff's request for attorney's fees is denied.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge